Office - Supreme Court, U.S.
FILED
JUN 7 1985
ALEXANDER L. STEVAS
CLERK

NO. 84-1591

In the Supreme Court of the United States

OCTOBER TERM 1984

SUCCESSION OF CHARLES HASKEL GRICE,
SUSAN MARIE BREAUX BOUDREAUX,
Appellant

AGNES BOUTTE GRICE,
Appellee

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF LOUISIANA

MOTION TO DISMISS OR TO AFFIRM

EAVELYN T. BROOKS
Assistant Attorney General
Louisiana Department of Justice
234 Loyola Building, Suite 700
New Orleans, Louisiana 70112
Telephone: (504) 568-5575
Member of the Bar of this Court
Counsel of Record

WILLIAM J. GUSTE, JR.
Attorney General

KENDALL L. VICK
Assistant Attorney General

Attorneys for Respondent,
The State of Louisiana

BEST AVAILABLE COPY

12pp

QUESTION PRESENTED

Did the Supreme Court of Louisiana err in holding Louisiana Civil Code Article 209 constitutional by finding that nineteen years from birth is sufficiently long to provide a reasonable opportunity to those with an interest in illegitimate children to bring suit for filiation on their behalf and that the nineteen year limitation on that opportunity is substantially related to the state's interest?[1]

---

[1] The State of Louisiana was not a party to this proceeding in the state courts. We present this Motion in compliance with the Court's request that we respond. The only parties to this proceeding are Appellant, Susan Marie Boudreaux, and Appellee, Agnes Boutte Grice.

TABLE OF CONTENTS

Question Presented i
Opinion Below 1
Jurisdiction 1
Constitutional and Statutory Provisions 2
Statement of the Case 3
Argument 4
Conclusion 8
Certificate of Service 9

TABLE OF AUTHORITIES

CASES:

Chase Securities Corp. v. Donaldson, 325 U.S. 304 (1945) *5*
Lalli v. Lalli, 439 U.S. 259 (1978) 5
Mills v. Habluetzel, 456 U.S. 91 (1982) 5, 6, 7
Pickett v. Brown, ____ *U.S.* ____, *1035, S.Ct. 2199 (1983)* *5, 6*
Trimble v. Gordon, 430 U.S. 762 (1977) 4

STATUTES:

Louisiana Civil Code Article 209 ..... 1, 2, 3, 4, 7
Louisiana Civil Code Article 37 6

IN THE SUPREME COURT OF
THE UNITED STATES
October Term, 1984

SUCCESSION OF CHARLES HASKEL GRICE,
SUSAN MARIE BREAUX BOUDREAUX,
Appellant,

AGNES BOUTTE GRICE,
Appellee

MOTION IN THE ALTERNATIVE TO DISMISS OR TO AFFIRM

May it please the Court:

The State of Louisiana moves that the appeal herein taken be dismissed on the ground that said appeal does not present a substantial federal question.

OPINION BELOW

This is an appeal from a decision of the Supreme Court of Louisiana which rejected the appellant's contention that Louisiana Civil Code Article 209 denies to an illegitimate child the equal protection of the laws and due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

JURISDICTION

The jurisdictional requisites are adequately set forth in the appellant's jurisdictional statement.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Louisiana Civil Code Article 209 provides as follows:

> A. A child not entitled to legitimate filiation nor filiated by the initiative of the parent by legitimation or by acknowledgment under Article 203 must prove filiation as to an alleged living parent by a preponderance of the evidence in a civil proceeding instituted by the child or on his behalf within the time limit provided in this article.
>
> B. A child not entitled to legitimate filiation nor filiated by the initiative of the parent by legitimation or by acknowledgment under Article 203 must prove filiation as to an alleged deceased parent by clear and convincing evidence in a civil proceeding instituted by the child or on his behalf within the time limit provided in this article.
>
> C. The proceeding required by this article must be brought within one year of the death of the alleged parent or within nineteen years of the child's birth, whichever first occurs. This time limitation shall run against all persons, including minors and interdicts. If the proceeding is not timely instituted, the child may not thereafter establish his filiation, except for the sole purpose of establishing the right to recover damages under Article 2315. A proceeding for that purpose may be brought within one year of the death of the alleged parent and may be cumulated with the action to recover damages.
>
> D. The right to bring this proceeding is heritable.

Other pertinent constitutional and statutory provisions are set forth in the appellant's jurisdictional statement.

STATEMENT OF THE CASE

Louisiana Civil Code Article 209 provides two tests for proof of filiation by a child who is not entitled to legitimate filiation nor filiated by the initiative of the parent or by acknowledgment. If the alleged parent is living the child must prove filiation by a preponderance of the evidence in a civil proceeding brought within nineteen years of the child's birth. If the alleged parent is deceased, however, the child must prove filiation by clear and convincing evidence in a civil proceeding instituted by the child or on his behalf within one year of the death of the alleged parent or within nineteen years of the child's birth, whichever first occurs.

In her jurisdictional statement, the appellant alleges that she was born on June 27, 1951. Her mother and her alleged father were never married to each other. Her alleged father, Charles Haskel Grice, died intestate on March 8, 1983. The appellant admits that she did not file a civil proceeding to prove filiation within nineteen years of her birth. Instead, some thirty-two years after her birth and some thirteen days after her alleged parent's death, she petitioned the state district court to appoint her provisional administratrix of his succession. She was appointed by the trial court.

The widow of the appellant's alleged parent petitioned the state court to remove the appellant as provisional administratrix for the reason that at the time of the death

more than nineteen years had elapsed since the appellant's birth and that, pursuant to Civil Code Article 209, appellant was barred from proving filiation. The appellant argued that article 209 is unconstitutional on equal protection grounds in that it requires that an action to prove filiation be brought within nineteen years of birth.

The trial court determined that article 209 was unconstitutional. The Louisiana Supreme Court reversed the trial court. It held that the nineteen year limitation is sufficient to provide a reasonable opportunity to those with an interest in illegitimate children to bring suit on their behalf and that the time limitation bears a substantial relation to the state's legitimate interest.

The appellant would have this court reverse the State Court and invalidate Civil Code Article 209 because the elevated burden of proof required to prove filiation after the death of the alleged parent satisfies the only real state interest in this kind of case which leaves the nineteen year time limitation unsupported by a state interest.

ARGUMENT

The appellant's argument is seriously flawed. The Louisiana statute under attack here does not mandate a combination of absolute requirements as a precondition to inheritance such as that invalidated by this Court in *Trimble v. Gordon*, 430 U.S. 762 (1977). Rather, it addresses two different factual situations each of which has inherent problems that affect a different legitimate state interest. In any given situation, however, only one section of the statute, and its accompanying requirements, applies.

For analytical purposes, this appeal is akin to that in *Lalli v. Lalli*, 439 U.S. 259 (1978), wherein the Court noted that only a single requirement of the statute was at issue even though the statute required both that the order of filiation by made during the lifetime of the father *and* that the proceeding for filiation be commenced within two years from the birth of the child. The Court declined to rule on the two year limitation because "if the rule that paternity be judicially declared during the father's liftime were upheld, the appellant would lose for failure to comply with that requirement alone." 439 U.S. at footnote 5, pg. 267. Likewise, if the 19 years from birth statute of limitation at issue herein is valid, the appellant at bar loses for failure to comply with that aspect alone.

Statutes of limitation previously have been upheld by this Court because they "spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost." *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1945). This Court further recognized that such limitations are necessarily arbitrary but must be sufficiently long to provide a "reasonable opportunity for those with an interest in such [illegitimate] children to assert claims on their behalf." *Mills v. Habluetzel*, 456 U.S. 91, 99 (1982).

The Louisiana statute clearly meets the tests of reasonableness applied by this Court in *Pickett v. Brown*, ___ U.S. ___, 103 S.Ct. 2199 (1983) and *Mills v. Habluetzel*, 456 U.S. 91 (1982). In those decisions the Court held that both a one year and a two year period of limitation were violative of equal protection because of the many obstacles to bringing suit so soon after an illegitimate

birth. The difficult circumstances that required the invalidation of both the *Mills* one year and the *Pickett* two year periods of limitation are not present under the Louisiana statute.

For example, a positive feature of the nineteen year period within which suit for filiation is permitted is that it reaches beyond the age of majority.[1] Thus, a child does not have to rely on its parent or upon the state to bring its claim. Note also that after the passage of 18 years, neither the mother nor the child has the right to seek child support so that the fear that the parent will retaliate by discontinuing voluntary support is not relevant to the Louisiana period of limitations.

Moreover, the mother has 18 years to recover from the difficulties inherent in the birth such as the financial difficulties caused by delivery. She and the child have 19 years to recover from the disapproval of family and community that was referred to as an obstacle in *Mills* and *Pickett*. Nor is the mother's desire not to alienate the affection of the alleged father a major factor inasmuch as the child has a year after majority within which to file a suit for filiation without the mother's consent or participation. Nineteen years from birth clearly negates the fears raised in the concurring opinion in *Mills* and by the main opinion in *Pickett*.

Nineteen years also is adequate to meet the second inquiry required in the analysis of the constitutionality of a contested statute. Such a limitation is more than

---

[1] Civil Code Article 37 provides that a child reaches majority at the age of 18 years.

substantially related to the State's interest in avoiding stale or fraudulent claims.[2] The Court held in *Mills*, 456 U.S. at 101, that it could "conceive of no evidence essential to paternity suits that invariably will be lost in only one year, nor is it evident that the passage of 12 months will appreciably increase the likelihood of fraudulent claims." Nineteen years is, however, a different matter.

The likelihood that grandparents and siblings of the parents will die or will suffer decreased mental faculties is greatly increased by the passage of nineteen years. It also is much more likely that the memories of friends and neighbors will have faded or that they will have lost touch with the principals involved over such a lengthy period of years. The Louisiana limitations period certainly is more than an "improvement in degree" over the periods invalidated by this Court. The Louisiana statute attempts to eradicate the real danger that proof of such an intimate act as that involved in the proof of filiation will be lost. The State of Louisiana submits that the statute of limitations provided by Article 209 reasonably addresses that legitimate state interest. Thus, the appellant's contention that the statute is unconstitutional presents no federal question.

---

[2] The elevated burden of proof that is applicable only if suit is filed after the death of the alleged parent, however, is related to the state's interest in the orderly disposition of property at death. The state's interest in the disposition of property has long been recognized. See *Lalli v. Lalli*, 439 U.S. 259, 268 (1978). "This interest is directly implicated in paternal inheritance by illegitimate children because of the peculiar problems of proof that are involved." 439 U.S. at 268. The method by which to achieve the accurate and efficient distribution of property at death is "a matter particularly within the competence of the individual states." *Trimble v. Gordon*, 430 U.S. 762, 771 (1977). The States are free to fashion their requirements of proof and this Court has recognized the enhanced problems in proof that arise when an alleged father is deceased. *Lalli v. Lalli*, 439 U.S. at 270-271.

BEST AVAILABLE COPY

CONCLUSION

The state's motion to dismiss the appeal, or in the alternative to affirm the State Supreme Court should, therefore, be sustained.

Respectfully submitted,

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

KENDALL L. VICK
ASSISTANT ATTORNEY GENERAL

BY:_____
EAVELYN T. BROOKS
ASSISTANT ATTORNEY GENERAL
LOUISIANA DEPARTMENT OF JUSTICE
234 LOYOLA AVENUE, SUITE 700
NEW ORLEANS, LOUISIANA 70112
TELEPHONE: (504) 568-5575
Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Eavelyn T. Brooks, one of the attorneys for the State of Louisiana, respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the _____ day of June, 1985, I served copies of the foregoing Motion to Dismiss or to Affirm on the serveral parties thereto, as follows:

1. On Susan Marie Breaux Boudreaux, appellee, by mailing a copy, in a duly addressed envelope, with postage prepaid, to her attorney of record, Ashton L. Stewart, Esquire, at his office at 339 Florida Street, Suite 400, Baton Rouge, Louisiana, 70801.

2. On Agnes Boutte Grice, appellant, through her attorney of record, H. Sanders O'Neal, Esquire, Post Office Box 590, Houma, Louisiana, 70369.

All parties required to be served have been served.

New Orleans, Louisiana, this _____ day of June, 1985.

EAVELYN T. BROOKS
ASSISTANT ATTORNEY GENERAL
LOUISIANA DEPARTMENT OF JUSTICE
234 LOYOLA AVENUE, SUITE 700
NEW ORLEANS, LOUISIANA 70112
TELEPHONE: (504) 568-5575
Counsel of Record